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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/595,894	07/24/2006	Didier Courtois	3712036-00735	8671

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EXAMINER	
MCCORMICK, MELENIE LEE	
ART UNIT	**PAPER NUMBER**
1655	

NOTIFICATION DATE	DELIVERY MODE
01/28/2011	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

chicago.patents@klgates.com

Office Action Summary	Application No.	Applicant(s)	
	10/595,894	COURTOIS ET AL.	
	Examiner	Art Unit	
	MELENIE MCCORMICK	1655	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *19 July 2010*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,2 and 4-19* is/are pending in the application.

4a) Of the above claim(s) *1,2,4-13 and 16-18* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *14,15 and 19* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 19 July 2010 has been entered.

Claims 1, 2 and 4-19 are pending.

Claims 1, 2, 4-13 and 16-18 stand withdrawn from consideration.

Claims 14-15 and 19 are presented for examination on the merits.

Withdrawn Rejections

The previous rejection under 35 U.S.C. 112, second paragraph has been withdrawn in light of the amendment to the claims, which no longer recite the phrase 'an effective amount'.

Claim Rejections – 35 USC § 101

35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 14, 15, and 19 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claims 14-15 and 19 are drawn to a product of nature. Claims 14-15 and 19 read on a beet which has been dried naturally, for instance in the sun and therefore, the hand of man is evident in the claimed invention. As evidenced by wikipedia.org, beets naturally contain both protein and fat and therefore read on a fat source as well as a protein source, as instantly claimed (see wikipedia page 3). Please note that a dried beet can be used as a food product or as a hair or skin care product because it can be consumed. The instant claims to not structurally limit the claimed food products or skin and hair care products in such a way that they do not encompass naturally occurring dried beets.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 14-15 and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Weichmann (1917) with evidence provided by wikipedia.org/wiki/Beets.

Weichmann teaches that dried beets which were dried at a temperature in the range of 40-50°C (see e.g. abstract). Weichmann also teaches that the sugar content of beets dried at a lower temperature was higher than those dried at a higher temperature (see e.g. abstract). The beets disclosed by Weichmann, therefore, read on the beets instantly claimed since they were dried at a temperature of 110°C or below, which is a process to obtain glucosamine in an amount greater than 150 mg/kg dry matter, as evidenced by the previously pending claim 3 and the instant specification (see page 11, lines 4-16). Therefore, since the beets were dried at a temperature of less than 110°C, the beets (plants material) were 'processed to obtain glucosamine in an amount greater than 150 mg/kg dry matter', as claimed. Although Weichmann does not explicitly teach that the beets were dried for less than one week, it should be noted that the instant claims are drawn to a product rather than a process. Please note that "the patentability of a product does not depend upon its method of production. If the product in [a] product-by-process claim is the same as or obvious from a product of the prior art, [then] the claim is unpatentable even though the prior [art] product was made by a different process." In re Thorpe, 227 USPQ 964, 966 (Fed. Cir. 1985) (citations omitted). Once the examiner provides a rationale tending to show that the claimed product appears to be the same or similar to that of the prior art, although produced by a different process, the burden shifts to applicant to come forward with evidence establishing an unobvious difference between the claimed product and the prior art

product. In re Marosi, 218 USPQ 289, 292 (Fed. Cir. 1983). Therefore, in the absence of evidence to the contrary, the beets disclosed by Weichmann read on the product instantly claimed.

In addition, as evidenced by wikipedia.org, beets naturally contain both fat and protein. Therefore, the beets disclosed by Weichmann read on a composition as instantly claimed since they naturally comprise both fat source and a protein source. The dried beets disclosed by Weichmann are orally ingestible compositions in the form of food products. In addition, nothing would preclude one from using the dried beets disclosed by Weichmann as a skin or hair care product. In order to be limiting, the intended use must create a structural difference between the claimed composition and the prior art composition. In the instant case, the intended use does not create a structural difference, thus the intended use is not limiting.

Therefore, the reference is deemed to anticipate the instant claims above.

Response to Arguments

35 U.S.C. 101

Applicants argue that claims 14 and 15 have been amended to recite an orally ingestible composition, cosmetic composition, or products comprising a fat source and at least one raw plant material selected from the group consisting of Daucus, Helianthus, Beta and combinations thereof, the plant material being processed by a drying process to obtain glucosamine in an amount greater than 150 mg/kg dry matter.

Applicants also argue that claim 19 has been amended to recite, in part, orally ingestible compositions comprising a source of protein and at least one raw plant material selected from the group consisting of Daucus, Helianthus, Beta and combinations thereof, the plant material being processed by a drying process to obtain glucosamine in an amount greater than 150 mg/kg dry matter. Applicants argue that the compositions and products of the present claims now require, in addition to the plant or derived plant material, a fat source or a source of protein. This argument is not found persuasive, however, as naturally occurring beets also contain fat and protein (see e.g. wikipedia.org page 3) and therefore also read on a source of fat and a source of protein. Therefore, as discussed in the rejection under 35 U.S.C. 101 above, the claims are drawn to a product of nature and are therefore drawn to non-statutory subject matter.

The rejection is deemed proper and is maintained.

35 U.S.C. 102

Applicants have summarized the instant claim amendments. Applicants argue that they have found that glucosamine can actually be formed in high amounts during a controlled drying process of some raw plant materials. Applicants also argue that the drying process of the present disclosure surprisingly provides a way to increase/obtain glucosamine at high levels and that it is likely that during the drying process, the glucosamine comes not from the direct degradation of macromolecules, but rather, from a release of free fructose and amino acid followed by the first steps of a Maillard

reaction. Applicants argue that Weichmann is deficient with respect to the pending claims because Weichmann fails to disclose or suggest each and every element of the present claims. Applicants argue that for example, Weichmann fails to disclose or suggest compositions comprising, in addition to the plant or derived plant material having increased amounts of glucosamine, a source of fat or protein. This is not found persuasive, however, because as discussed above, beets themselves are a source of fat and protein. This is evidenced by wikipedia.org (see page 3) and is discussed in the rejection under 35 U.S.C. 102 above. Applicants argue that Weichmann is entirely directed to the formation of carbohydrates from drying plants at varying degrees of heat but that at no place in the disclosure does Weichmann disclose or suggest compositions having multiple ingredients, let alone having added fat or protein sources as required, in part, by the present claims. This reasoning is not found persuasive. The claims are broadly drawn to a composition comprising a fat source or a protein source and at least one raw plant material. The claims do not distinguish the source of protein and the source of fat from protein and fat inherent to beets. Therefore, given the broadest reasonable interpretation of the claims, the claims read on the dried beets disclosed by Weichmann. Applicants argue that the Patent Office has failed to identify any disclosure in Weichmann that demonstrates any compositions or products containing ingredients in addition to a dried raw plant material used to obtain glucosamine in an amount greater than 150 mg/kg dry matter as required, in part, by the present claims. This is not found persuasive because, as discussed above, the fat source and protein source, as claimed are not distinguishable from inherent fat and protein in the dried beets of Weichmann.

The rejection is therefore deemed proper and is maintained.

Conclusion

No claim is allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MELENIE MCCORMICK whose telephone number is (571)272-8037. The examiner can normally be reached on M-F 7:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terry McKelvey can be reached on 571-272-0775. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Melenie McCormick/
Examiner, Art Unit 1655